

JUN 26 1950

**Supreme Court of the United States**

OCTOBER TERM, 1950

No. 147

THE STATE OF WEST VIRGINIA, at the Relation of  
DR. N. H. DYER and W. W. JENNINGS, Commis-  
sioners for the State of West Virginia to The Ohio  
River Valley Water Sanitation Commission, D. Jack-  
son Savage, Chairman of the State Water Commission  
of the State of West Virginia, and Dr. N. H. Dyer,  
W. W. Jennings, Dan B. Fleming, and Dr. C. F. Mc-  
Clintic, Members of the State Water Commission,  
*Petitioner,*

v.

EDGAR B. SIMS, Auditor of the State of West Virginia,  
*Respondent.*

**PETITION FOR A WRIT OF CERTIORARI TO THE  
SUPREME COURT OF APPEALS OF WEST VIR-  
GINIA AND BRIEF IN SUPPORT THEREOF**

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v.

EDGAR B. SIMS, Auditor of the State of West Virginia,  
*Respondent.*

## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Petitioner, the State of West Virginia, at the relation of  
Dr. N. H. Dyer and W. W. Jennings, Commissioners for  
the State of West Virginia to the Ohio River Valley Water  
Sanitation Commission, and the other parties designated  
in the caption, prays that a writ of certiorari be issued to  
the Supreme Court of Appeals of West Virginia to review  
the judgment of that Court entered in the above entitled  
cause.

### JUDGMENT BELOW

The judgment of the court below was entered on April  
4, 1950, (Record p. 13). The rules of the Supreme Court

of Appeals of West Virginia make no provision for a rehearing in a cause of this nature and, therefore, was not requested.

### **QUESTIONS PRESENTED**

1. Whether the power of a state of the Union to enter into compacts with other states of the Union to which consent and approval of Congress has been given pursuant to Article I, Section 10, Clause 3, of the Constitution of the United States, can be limited or restricted by the provisions of its own constitution.

2. If the power of a state of the Union to enter into compacts with other states of the Union can be restricted by the provisions of its own constitution, does Article X, Section 4, of the Constitution of the State of West Virginia restrict such power.

3. If Article X, Section 4 of the Constitution of the State of West Virginia can and does restrict the power of that state to enter into compacts with other states of the Union, then, does Article X or any other provision of the Ohio River Valley Water Sanitation Compact subject the State of West Virginia to any obligation in violation of the above mentioned Article and Section of its constitution?

4. Whether ratification and enactment into law of the Ohio River Valley Water Sanitation Compact by the Legislature of the State of West Virginia resulted in an unconstitutional delegation of police power or of legislative authority.

### **CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED**

1. The language of Article I, Section 10, Clause 3 of the Constitution of the United States which is pertinent to this cause is as follows:

“No state shall, without the consent of Congress . . . enter into any agreement or compact with another state. . . .”

2. The language of Article X, Section 4 of the Constitution of West Virginia is as follows:

*"Limitation on Contracting of State Debt*

4. No debt shall be contracted by this State, except to meet casual deficits in the revenue, to redeem a previous liability of the State; to suppress insurrection, repel invasion or defend the State in time of war; but the payment of any liability other than that for the ordinary expenses of the State, shall be equally distributed over a period of at least twenty years."

3. Public Resolution No. 104, of the Seventy-Fourth Congress of the United States, approved June 8, 1936, authorized of the states of the Ohio River drainage basin to enter into an interstate compact for the control and abatement of stream pollution in that basin. The full text of that resolution is set forth as Appendix A of this Petition and Brief.

4. Public No. 739-Seventy-Sixth Congress, Chapter 581-Third Session, S3617, approved July 11, 1940, expressly gave the consent and approval of Congress to the Ohio River Valley Water Sanitation Compact in the verbatim form in which it was ratified and enacted into law by all participating states. The full text of that Act, including the full text of the Compact, appears as Appendix B of this Petition and Brief.

5. Chapter 38 of the Acts of the West Virginia Legislature, Regular Session, 1939, ratified and enacted into law the Ohio River Valley Water Sanitation Compact. The full text of that Act, excluding the text of the Compact (which is identical with the text set out in Appendix B) appears as Appendix C of this Petition and Brief.

### **STATEMENT OF THE CASE**

The judgment which Petitioner seeks to have reviewed by this Court was entered by the Supreme Court of Ap-



peals of West Virginia in a mandamus proceeding instituted in that court by Petitioner, upon the relation of the persons named above in the caption (Rec. pp. 1 & 5), seeking to compel Respondent, Edgar B. Sims, the duly elected and qualified Auditor of the State of West Virginia, to honor a requisition for the issuance of a warrant upon the treasury of the State for the payment of an appropriation previously made by the Legislature of West Virginia of the sum representing that State's proportionate share of the expenses, for the fiscal year 1949-1950 of the Ohio River Valley Water Sanitation Commission, an agency created by an interstate compact duly authorized and approved by Congress (Rec. pp. 3 & 4).

By Public Resolution No. 104, approved June 8, 1936, the Seventy-Fourth Congress of the United States authorized the states situated in the Ohio River drainage basin, including the State of West Virginia, to enter into an interstate compact for the control and abatement of stream pollution in that basin (Appendix A). Thereafter, commissioners from various states of the Ohio River basin were appointed by their respective Governors for the purpose of negotiating a compact in accordance with the foregoing authorization. Following agreement among the negotiating commissioners as to its form, the proposed compact was ratified by appropriate legislative action of the States of New York, Illinois, Kentucky, Indiana, Ohio and West Virginia (Appendix B). Thereafter, by Public No. 739-Seventy-Sixth Congress, Chapter 581-Third Session, S3617, approved July 11, 1940, the consent and approval of Congress was expressly given to the Ohio River Valley Water Sanitation Compact in the verbatim form agreed upon by the negotiating commissioners and ratified by the above mentioned six states (Rec. pp. 1 & 2 & Appendix B). Subsequently the Compact was ratified by



appropriate action of the legislatures and executives of the States of Pennsylvania and Virginia. In evidence of their ratification, adoption and enactment into law of the Ohio River Valley Water Sanitation Compact, that document was formally executed on behalf of each of the above named states, by their respective governors and other appropriate representatives at Cincinnati, Ohio, June 30, 1948 (Rec. p. 2).

Following the formal execution of the Compact, the Ohio River Valley Water Sanitation Commission, which was created by the terms and provisions of the Compact, was organized and launched upon a program designed to fulfill the objectives of the Compact.

Ratification and approval of the Ohio River Valley Water Sanitation Compact had been accomplished on March 11, 1939 (Rec. pp. 1 & 2), by the State of West Virginia through the enactment of Chapter 38, Acts of the West Virginia Legislature, Regular Session, 1939. It is this action of the Legislature of West Virginia which the Supreme Court of Appeals of that State has declared to be unconstitutional.

The Legislature of West Virginia duly appropriated from the general revenues of that State the sum of Twelve Thousand Two Hundred and Fifty Dollars (\$12,250.00), representing West Virginia's proportionate share, computed in accordance with the provisions of the Compact, of the expenses of the Ohio River Valley Water Sanitation Commission for its fiscal year, July 1, 1949 to June 30, 1950 (Rec. p. 2).

Respondent, Edgar B. Sims, as Auditor of the State of West Virginia, is required to issue warrants upon the Treasury of that State before appropriations of its legislature may be paid (Rec. p. 2). On August 26, 1949, Dr. N. H. Dyer, one of the relators in the proceeding below,

acting in his capacity as a duly appointed and qualified commissioner representing the State of West Virginia under the Ohio River Valley Water Sanitation Compact, submitted to Respondent as State Auditor, a requisition for the issuance of a warrant authorizing payment to the Ohio River Valley Water Sanitation Commission of the above mentioned sum appropriated by the Legislature of West Virginia (Rec. p. 3).

Respondent refused to honor the requisition submitted to him as above described and refused to honor such a requisition when, on two subsequent occasions, November 7, 1949 and December 22, 1949, it was resubmitted to him (Rec. p. 3). Proceedings were instituted by Petitioner in the Supreme Court of Appeals of West Virginia, the highest court of the State, seeking a writ of mandamus commanding respondent to issue the warrant requested as above described (Rec. pp. 1 & 5). Upon Petitioner's Application the Supreme Court of Appeals of West Virginia issued a rule commanding Respondent to appear and show cause why the relief sought by Petitioner against him should not be granted (Rec. p. 5). Upon the date set for the return of the rule, Respondent appeared and filed a demurrer (Rec. pp. 6 et seq.) to Petitioner's Application for a Writ of Mandamus and in addition filed an answer (Rec. pp. 7 et seq.) which raised no issues of fact but which set forth various grounds upon which respondent based his refusal to honor the requisition involved (Rec. pp. 7 et seq.).

Since no issues of fact had been raised, the cause was submitted to the Supreme Court of Appeals of West Virginia upon the pleadings and upon arguments and briefs of counsel (Rec. p. 12). Following consideration of the cause, the Court, by order entered April 4, 1950 (Rec. p. 13), and for reasons set forth in the opinion filed on behalf

of the majority of its members (Rec. pp. 14 et seq.), denied the requested writ of mandamus and dismissed Petitioner's application therefor. A dissenting opinion was filed on behalf of the minority members of the Court (Rec. pp. 32 et seq.).

### **RULING OF THE COURT BELOW**

By its judgment sustaining the demurrer of Respondent and dismissing Petitioner's application for a writ of mandamus, the Supreme Judicial Court of West Virginia held that ratification and enactment into law of the Ohio River Valley Water Sanitation Compact by the Legislature of West Virginia was an unconstitutional legislative act for the reason that it violated Article X, Section 4 of the Constitution of West Virginia and for the further reason that it resulted in an unconstitutional delegation of police power. Since, in the opinion of the West Virginia Court, ratification and enactment into law of the Ohio River Valley Water Sanitation Compact was unconstitutional, that Court concluded that the appropriation by the Legislature of West Virginia of funds to cover that State's proportionate part of the expense of operating the Ohio River Valley Water Sanitation Commission was improper and, therefore, the Respondent, as Auditor of the State, was justified in refusing to honor the requisition which had been submitted to him for the issuance of a warrant authorizing payment from the State Treasury of the sum thus appropriated. To arrive at its decision the Supreme Court of Appeals of West Virginia necessarily had to hold that;

1. The State of West Virginia *could*, by the provisions of its constitution, restrict the power of that state to enter into compacts with other states notwithstanding the provisions of Article I, Section 10, Clause 3 of the Constitution of the United States;

2. Article X, Section 4 of the Constitution of West Virginia *does* limit and restrict the power of that State to enter into compacts with other states of the Union;

3. Article X of the Ohio River Valley Water Sanitation Compact *did* create an obligation on the part of the State of West Virginia in violation of Article X, Section 4 of its Constitution;

4. Ratification and enactment into law of the Ohio River Valley Water Sanitation Compact by the Legislature of West Virginia *did* result in an unconstitutional delegation of police power.

### **REASONS FOR THE ALLOWANCE OF THE WRIT**

#### **1. The Supreme Court of Appeals of West Virginia Has Decided Federal Questions of Substance Not Heretofore Determined by This Court.**

Each of the questions heretofore designated as being involved in this cause is a Federal question of substance which had to be answered by the Supreme Court of Appeals of West Virginia, in arriving at the ultimate decision evidenced by the judgment for which review is now sought. The first of the designated questions involves a conflict between certain language of the Constitution of West Virginia and the language of Article I, Section 10, Clause 3, of the Constitution of the United States, which, as more fully set forth in the brief, should be construed as not only a limitation upon the power of states to compact with one another, but also as a guarantee to them, within such limitation, of the irrevocable power to compact with each other on an equal footing.

If the contention of Petitioner with respect to the first question involved in this cause is correct, the second and third questions designated above do not need to be answered, but on the other hand, if that contention of Petitioner is not sustained by this Court, then questions two



and three must be considered. While question two involves the interpretation of a provision of a state constitution, it also involves the validity of an interstate compact to which Congress has given consent and approval. As will be more fully pointed out in the brief, this Court has held that the validity of such interstate compacts is a Federal question to be decided by this Court notwithstanding the fact that application or interpretation of state constitutional provisions may be involved.

The third question designated above as being involved in this cause calls for an interpretation or construction of the Ohio River Valley Water Sanitation Compact itself. The interpretation or construction of an interstate compact, entered into with consent and approval of Congress presents a Federal question as to which this Court is the final arbiter.

The fourth question also involves an interpretation and construction of the Ohio River Valley Water Sanitation Compact in order to determine whether and to what extent any police power has been improperly delegated by the Legislature of West Virginia. Again, this is a Federal question which may be resolved with finality only by this Court.

All four of the questions which have been designated as being involved in this cause are Federal questions of substance. None of them has ever been answered by this Court insofar as counsel for Petitioner is able to determine. Although the first of these questions was not discussed in their respective opinions by either the majority or minority of the court below, all of them were directly involved in the decision which was there reached and all of them had to be answered, and answered in the manner above set forth, before the majority of the Supreme Court of Appeals of West Virginia could reach the conclusions upon which it based its judgment in this case.

## **2. The Questions Raised by This Cause Are of Great Public and General Interest.**

While this cause stands before this Court as one primarily involving officials and other representatives of the State of West Virginia and as one limited in scope to the participation of the State of West Virginia in the Ohio River Valley Water Sanitation Commission, the significance of the decision of the court below extends far beyond the specific situation now before this Court. If the decision of the Supreme Court of Appeals of West Virginia is permitted to stand, not only will the State of West Virginia and its citizens be denied the benefits to be derived from seeking, through the joint efforts of the states of the Ohio River Valley, a common solution to an increasingly serious problem which is not limited by state boundaries and which can be solved only through regional action, but in addition West Virginia's participation in all other efforts to cooperate with sister states in solving common or mutual problems will be prevented or seriously curtailed.

It must also be recognized that the principles upon which the decision of the West Virginia Court is based may be accepted by the courts of any other state which is a signatory to the Ohio River Valley Water Sanitation Compact as authority for holding that participation of such other state in the Compact is unconstitutional. Thus the West Virginia decision places in jeopardy the entire effort on the part of the Ohio River Valley states to solve a vast regional problem through joint action.

Furthermore, the significance of the decision of the West Virginia Court in this cause is not limited to the Ohio River Valley Water Sanitation Compact or to West Virginia's participation in interstate activities. That decision, standing as a precedent for the proposition that local constitutional provisions may inferentially limit the power and authority of any state to enter into compacts with other



states and also standing as a precedent for the theory that the validity of an interstate compact is continuously subject to the varying interpretations which may be given to its provisions by the courts of participating states, casts doubt upon the validity of practically every interstate compact presently in existence. If permitted to stand, the West Virginia decision may at any time be brought forward and accepted as authority for holding unconstitutional any one of the current water pollution abatement compacts, any of the water allocation compacts which are familiar to the western part of the country, the New York Port Authority Compact, upon the basis of which millions of dollars of obligations have been issued, and the many other cooperative projects which have been undertaken by various groups of states. In addition, the principles of the West Virginia decision will no doubt deter other states from looking to the compact clause of the Constitution of the United States for a means of solving problems which project beyond state lines.

It has been stated above that the rules of practice before the Supreme Court of Appeals of West Virginia contain no provision for a rehearing of a case of this nature and as a result no reconsideration of its decision could be requested of the West Virginia Court. The proceedings had been instituted originally in the Supreme Court of Appeals of West Virginia and consequently that Court was not reviewing the conclusions of any other judicial body. Furthermore, the questions passed upon by the Court below were all questions of first impression with that Court and the members of the Court were divided three to two in their opinions upon the issues before them. These circumstances should weigh heavily in favor of having the judgment below reviewed by this Court since it can hardly be said at this point that the interests of the millions of inhabitants of the Ohio River Valley who will be affected by

the Compact under consideration have been accorded the judicial consideration to which they are entitled. It would be most unfortunate, to say the least, to have a project of the magnitude and importance of that contemplated by the Ohio River Valley Water Sanitation Compact scrapped or curtailed on the basis of a divided and unreviewed decision of a single court, in a case of first impression.

### **CONCLUSION**

For the reasons above set forth it is respectfully submitted that this Petition should be granted.

JOHN B. HOLLISTER,  
*Attorney for Petitioner.*

### **BRIEF IN SUPPORT OF PETITION FOR CERTIORARI OPINIONS BELOW**

Two opinions were filed in the Supreme Court of Appeals of West Virginia. The majority opinion was written by Judge Fox with two members of the Court concurring. That opinion was filed on April 4, 1950, and appears at page 14 of the Record. It is reported in 133 West Virginia Reports, page not yet determined, and in 58 Southeastern Reporter, 2nd Series, 766. The dissenting opinion was written by Judge Given, with one member of the court concurring. The minority opinion was filed on April 12, 1950, and appears at page 32 of the Record. It is reported in 133 West Virginia Reports, page not yet determined, and in 58 Southeastern Reporter, 2nd Series, beginning at page 777.

### **JURISDICTION**

The jurisdiction of the Court is invoked under Title 28, United States Code, Section 1257 (3). The judgment of

the Supreme Court of Appeals of West Virginia was entered April 4, 1950 (Rec. p. 13). A rehearing in a case of this nature is not provided for by the rules of that Court and, therefore, could not be requested. The Petition for Writ of Certiorari was filed June 28, 1950.

The Application for Mandamus filed in the Court below recited that Congress of the United States had given its consent and approval to the Ohio River Valley Water Sanitation Compact by Public-No. 739-Seventy-Sixth Congress (Rec. p. 2); that the Compact had been ratified and enacted into law by the Legislature of West Virginia (Rec. pp. 1 & 2), and that the appropriation of the Legislature of West Virginia with respect to which Respondent had declined to issue a warrant upon the State treasury had been made for the purpose of paying West Virginia's share of the expenses of the Ohio River Valley Water Sanitation Commission for the fiscal year July 1, 1949 to June 30, 1950 (Rec. p. 2). These facts were admitted by the pleadings of Respondent (Rec. pp. 6 & 7). The ruling of the Court below denying the requested order to compel payment of the appropriated sums was based upon the ground that the Compact under consideration was unconstitutional for the reasons (a) that it created a debt in violation of Article X, Section 4, of the Constitution of West Virginia, and (b) that it resulted in an improper delegation of police power. Thus the ruling below directly involved the validity and the construction of the Ohio River Valley Water Sanitation Compact, an interstate compact expressly approved by the Congress of the United States pursuant to Article I, Section 10, Clause 3, of the Constitution of the United States.

In *Delaware River Joint Toll Bridge Commission v. Colburn* (1940), 310 U. S. 419, 84 L. Ed. 1287, this Court, expressly overruling an earlier decision, accepted jurisdiction to review, by writ of certiorari, a decision of the Court

of Errors and Appeals of the State of New Jersey construing the provisions of a compact between New Jersey and Pennsylvania for the construction of an interstate bridge over the Delaware River and applying such provisions, together with local New Jersey statutes, to the claim of a New Jersey property owner for consequential damages resulting from the erection of the bridge. This Court considered the case and reversed the State Court. Jurisdiction of this Court was expressly based upon the conclusion that *the construction of a compact sanctioned by virtue of Article I, Sec. 10, Clause 3, of the Constitution, involves a Federal title, right, privilege or immunity which, when specially set up and claimed in a state court, could be reviewed here on certiorari under Sec. 237 (b) of the Judicial Code, 26 USCA Sec. 344.*

The decision last discussed was based in part upon an earlier case, *Hinderlider v. LaPlata River & Cherry Creek Ditch Company* (1938), 204 U. S. 92, 82 L. Ed. 1202, in which this Court accepted jurisdiction by writ of certiorari under Sec. 237 (b) of the Judicial Code [now 28 U. S. C. 1257 (3)] to review a state court decision holding invalid, *on local constitutional grounds*, an interstate water apportionment compact to which Congress had assented.

As has heretofore been pointed out, the facts with respect to the Compact and its approval by Congress were set forth in Petitioner's pleadings in the Court below. This alone has been held to be sufficient to meet the requirements of 28 U. S. C. 1257 (3) to the effect that a Federal title, right, privilege or immunity be "specially set up or claimed."

*Riley et al. v. New York Trust Company* (1942), 315 U. S. 343, 86 L. Ed. 885.

Furthermore, the existence of a Federal question sufficient to sustain the jurisdiction of the Court is adequately

shown and the requirement that a Federal right, title, privilege or immunity be "specially set up or claimed," is sufficiently met when, as here, it appears from the opinion of the State court under review that a Federal question was assumed to be in issue, that it was considered by the court, and that a decision thereon was a necessary part of the ruling of the court.

*San Jose Land and Water Company v. San Jose Ranch Company* (1903), 189 U. S. 177, 180, 47 L. Ed. 765, 768;

*Montana ex rel. Haire v. Rice* (1907), 204 U. S. 291, 299, 51 L. Ed. 490, 494;

*Charleston Federal Savings & Loan Association v. Alderson* (1945), 324 U. S. 182, 185, 89 L. Ed. 857, 861.

When the highest court of a state has undertaken to pass upon Federal questions which are properly reviewable by this Court by certiorari, this Court will accept jurisdiction in an action in which, as in the instant case, a writ of mandamus is sought to compel a state official to disburse state funds or to perform other administrative acts.

*State of Wyoming ex rel. Wyoming Agricultural College et al. v. Irvine* (1907), 206 U. S. 278, 51 L. Ed. 1063;

*Montana ex rel. Haire v. Rice* (1907), 204 U. S. 291, 299, 51 L. Ed. 490, 494;

*Coleman et al. v. Miller* (1939), 307 U. S. 433, 83 L. Ed. 1385.

As a corollary to the foregoing discussion with respect to the jurisdiction of this Court, it should be pointed out that this Court may review and, if proper, reverse the judgment of the Supreme Court of Appeals of West Virginia in this case, notwithstanding the fact that State constitutional questions are involved in part, and this Court



is not bound by the decision of the Court below with respect to local constitutional questions insofar as they relate to the validity of the Compact which is the subject matter of this litigation or with respect to the meaning of the Compact.

*Delaware River Joint Toll Bridge Commission v. Colburn* (1940), 310 U. S. 419, 84 L. Ed. 1287;  
*Hinderlider v. LaPlata River & Cherry Creek Ditch Company* (1938), 204 U. S. 92, 82 L. Ed. 1202.

In *Kentucky v. Indiana* (1930), 281 U. S. 163, 74 L. Ed. 784, it was expressly established that this Court is the "final constitutional arbiter" of questions relating to interstate compacts. In that case the Commonwealth of Kentucky sought specific performance by the State of Indiana of a compact, approved by Congress, to erect a bridge over the Ohio River. The defense of the State of Indiana was that it was not warranted in proceeding with the performance of the contract in the absence of the final determination of a separate proceeding, then pending in the state courts, wherein an Indiana citizen sought to enjoin performance of the contract on the ground that it was "unauthorized and void." By pointing out that the decision of the state court would not determine the controversy this Court indicated that the outcome of the state court litigation was immaterial. At pages 176 and 177 of the U. S. Report the following language was used:

"It cannot be gainsaid that in a controversy with respect to a contract between states, as to which the original jurisdiction of this Court is invoked, *this Court has the authority and duty to determine for itself all questions that pertain to the obligations of the contract alleged.* The fact that the solution of these questions may involve the determination of the effect of the local legislation of either state, as well as of acts of Congress, which are said to authorize the con-



tract, in no way affects the duty of *this Court to act as final, constitutional arbiter* in deciding the questions properly presented.

\* \* \* \*

"where the states themselves are before this Court for the determination of a controversy between them, *neither can determine their rights inter sese*, and this Court must pass upon every question essential to such a determination, although local legislation and questions of state authorization may be involved. *Virginia v. West Virginia*, 11 Wall 39, 56, 20 L. Ed. 67, 71, 220 U. S. 1, 28, 55 L. Ed. 353, 358, 31 Sup. Ct. Rep. 330. A decision in the present instance by the state court would not determine the controversy here." (Emphasis added.)

Although the case just discussed involved the states directly and was instituted in this Court as a matter of original jurisdiction, "the above quoted language with respect to the power of this Court to exercise independent judgment concerning questions involving interstate contracts should be equally applicable to the case at bar, where the validity of a compact between states is called in question.

The responsibility of this Court to exercise independent judgment with respect to state constitutional questions relating to state contracts is expressed in the following language in *Stearns v. Minnesota* (1900), 179 U. S. 223, 45 L. Ed. 162:

"The general rule of this Court is to accept the construction of a state constitution placed by the state supreme court as conclusive. One exception which has been constantly recognized is when the question of contract is presented. *This court has always held that the competency of a state, through its legislation, to make an alleged contract, and the meaning and validity of such contract, were matters which, in discharging*

*its duty under the Federal Constitution it must determine for itself; and while the leaning is toward the interpretation placed by the state court, such leaning cannot relieve us from the duty of an independent judgment upon the question of contract or no contract."* (Emphasis added.)

While the foregoing case involved a contract between a state and certain railroad companies, the statement quoted should apply equally to litigation, such as is now before this Court, involving a compact between states.

### ARGUMENT

1. **Whether the Power of a State of the Union to Enter into Compacts with other States of the Union to Which Consent and Approval of Congress Has Been Given Pursuant to Article I, Section 10, Clause 3, of the Constitution of the United States, Can Be Limited or Restricted by the Provisions of Its Own Constitution.**

The judgment of the Supreme Court of Appeals of West Virginia treats the language of Article X, Section 4, of the Constitution of that State as a limitation upon the power of the State to enter into compacts with other states. While the question is not expressly discussed in either opinion filed in the Court below, the judgment here under consideration necessarily constitutes a holding by the Court that the local constitutional provision, by prohibiting the State from contracting any debt, prevents the State from entering into any interstate compact under which the State may be required to contribute financial support to the accomplishment of any of the objectives of such compact. Since practically every type of joint endeavor among states will require administration necessarily entailing some expense, the interpretation placed by the West Virginia Court upon the restrictions of Article X, Section 4, of the West Virginia Constitution would reduce to extremely narrow limits the area of interstate cooperation

permissible to that State. It is the contention of Petitioner that such an interpretation of Article X, Section 4, places that provision of the West Virginia Constitution in conflict with the Compact Clause of the Federal Constitution. Article I, Section 10, Clause 3, of the Constitution of the United States does more than place a limitation upon the power of the states to enter into compacts with one another. It also operates as an affirmation of the inherent power of the sovereign States to enter into compacts with each other, free of possible cancellation, curtailment or limitation of any sort except for the single condition that the Congress of the United States must consent to its exercise. By that Clause of the Constitution, control over the power of the States to enter into compacts was withdrawn from state authority and preemptively vested in Congress.

The foregoing interpretation of the scope and effect of the compact clause is supported by the observations of Prof. (now Mr. Justice) Frankfurter and James M. Landis, appearing in *34 Yale Law Journal* 685, in an exhaustive treatise entitled "*The Compact Clause of the Constitution, A Study in Interstate Adjustments.*" At page 691 appears the following statement:

"...the Constitution authorizes a State to 'enter into any Agreement or Compact with another State' with 'the Consent of Congress'. Although, on very restricted occasions, availed of from the beginning, the pressure of modern interstate problems has revealed the rich potentialities of this device." (Emphasis added.)

As a footnote to the underlined portion of the above quotation the authors added:

"The Constitution puts this power negatively in order to express the limitation imposed upon its exercise. By putting this authority for State action in a section dealing with restrictions upon the States, the signifi-

cance of what *was granted* has probably been considerably minimized." (Emphasis added.)

While none of the foregoing observations have ever been specifically expressed in any reported cases, they are supported inferentially and in principle by a number of decisions of this Court. In *Hinderlider v. LaPlata River & Cherry Creek Ditch Company* (1938), 204 U. S. 92, 82 L. Ed. 1202, which has already been cited (pp. 13, 14 & 16) the validity of an interstate water allotment compact, approved by Congress, was sustained in the face of a contrary state court decision holding the compact to be in violation of provisions of the local constitution. This Court not only refused to be bound by the State Court's interpretation and application of provisions of its own constitution, but in addition this Court, by refusing to recognize the particular provisions of the State Constitution as invalidating the interstate compact which was before it, inferentially held that the inherent sovereign right of a state to compact with another could not be circumscribed by its own constitution.

As has already been discussed (Brief p. 16), this Court in *Kentucky v. Indiana* (1930), 281 U. S. 163, 74 L. Ed. 784, refused to await the outcome of pending state court litigation involving the validity of a compact between the two states and proceeded to order specific performance of the compact in question. The condition of Congressional approval had been met. In the opinion it was expressly stated that a decision of the state court could not determine the controversy and in effect it was asserted that the compact was valid no matter what might be the outcome of the pending state court proceeding. While the nature of the attack in the state court upon the compact is not disclosed, except that it was unauthorized and void, that proceeding might have resulted in a finding of a local constitutional violation.



By its attitude of indifference in this respect, this Court gave clear indication that it did not consider compact powers of a state subject to limitation or restriction by state constitutional provisions.

The correctness of the proposition that by Article I, Section 10, Clause 3, Congress was vested with the sole authority to limit or restrict the powers of the states to compact with one another is supported by the early case of *Poole v. Fleegar* (1837), 11 Peters, 185, 209, 9 L. Ed. 686, 690, in which the Court after pointing out that the right to settle boundary disputes by compact was a general right of sovereignty, stated:

"It is a right equally belonging to the States of this Union, unless it has been surrendered under the Constitution of the United States. So far from there being any pretense of such a general surrender of the right, that it is *expressly recognized by the Constitution, and guarded in its exercise by a single limitation or restriction, requiring the consent of Congress*. The Constitution declares that 'no State shall, without the consent of Congress, enter into any agreement or compact with another state'; thus plainly admitting that, with such consent, it might be done; and in the present instance, that consent has been expressly given. The compact, then, has full validity, and all the terms and conditions of it must be equally obligatory upon the citizens of both States." (Emphasis added.)

While the compact under consideration in the last cited case was a compact involving a boundary settlement, the above quoted language would have equal application to any other compact since the compact clause of the Constitution is not limited in application to boundary compacts but expressly relates to "any" compact.

In *Pennsylvania v. Wheeling & Belmont Bridge Company* (1851), 13 Howard 518, 14 L. Ed. 249, this Court in commenting upon a compact between Kentucky and Vir-

ginia with respect to the use and navigation of the Ohio River stated (p. 566):

“This Compact, by the sanction of Congress, has become a law of the Union.”

The most cogent language of this Court supporting the contention presently being made is to be found in the opinion written by Chief Justice White in *Virginia v. West Virginia* (1918), 246 U. S. 565, 62 L. Ed. 883. At page 601 and 602 of the U. S. Report the scope and effect of Article I, Section 10, Clause 3 of the Constitution of the United States was analyzed as follows. (U. S. Report pp. 601, 602):

*“The vesting in Congress of complete power to control agreements between states, that is, to authorize them when deemed advisable and to refuse to sanction them when disapproved, clearly rested upon the conception that Congress, as the repository not only of legislative power but of primary authority to maintain armies and declare war, speaking for all the states and for their protection, was concerned with such agreements, and therefore was virtually endowed with the ultimate power of final agreement which was withdrawn from state authority and brought within the Federal power. It follows as a necessary implication that the power of Congress to refuse or to assent to a contract between states carried with it the right, if the contract was assented to and hence became operative by the will of Congress, to see to its enforcement. This must be the case unless it can be said that the duty of exacting the carrying out of a contract is not, within the principle of *M'Culloch v. Maryland*, 4 Wheat. 316, 4 L. Ed. 579, relevant to the power to determine whether the contract should be made. But the one is so relevant to the other as to leave no room for dispute to the contrary.*

“Having thus the power to provide for the execution of the contract, it must follow that the power is plenary



*and complete*; limited, of course, as we have just said, by the general rule that the acts done for its exertion must be relevant and appropriate to the power. This being true it further follows, as we have already seen, that by *the very fact that the national power is paramount in the area over which it extends*, the lawful exertion of its authority by Congress to compel compliance with the obligation resulting from the contract between the two states which it approved is not circumscribed by the powers reserved to the states. . . .” (Emphasis added.)

A recognition of the compact clause as a grant of authority for state action, as a withdrawal from state authority of jurisdiction to limit or restrict the power of states to compact with one another and as a vesting of that control in Congress, exclusively, would operate as an assurance to all States of the Union that with the consent of Congress, they may deal with one another through the use of interstate compacts without hesitation as to their respective powers to assume contemplated obligations and responsibilities. Without such assurance the States would at all times be faced with the possibility that a carefully negotiated compact might collapse by reason of a subsequently discovered lack of power on the part of one of the parties. Without such assurance no state could ever negotiate with another a compact for the adjustment of a dispute between them or for the solution of a common regional problem with any degree of confidence as to the validity of any understanding ultimately reached between them. Without such assurance, no state could risk proceeding with the performance of its responsibilities under a compact for fear that one or more of the other contracting states might subsequently be held to have exceeded its authority in entering the compact and thus be prevented from fulfilling its end of the bargain.

The compact can continue to be a practical and effective vehicle for interstate cooperation only if it is unequivocally established that all of the States of the Union are vested with equal powers to compact with one another regardless of the peculiarities of their respective constitutions or the views of their local courts. To that end Article X, Section 4 of the Constitution of the State of West Virginia, as construed and applied in this case by the Supreme Court of Appeals of that State, should be held to be an invasion of a field in which Congressional control is exclusive and, therefore, repugnant to Article I, Section 10, Clause 3, of the Constitution of the United States.

**2. If the Power of a State of the Union to Enter into Compacts with other States of the Union Can Be Limited or Restricted by the Provisions of Its Own Constitution, Does Article X, Section 4, of the Constitution of the State of West Virginia Restrict Such Power?**

If this Court should conclude that the power of a State to enter into compacts with other States can be limited or restricted by the provisions of its own constitution, it must then be decided whether Article X, Section 4, of the Constitution of the State of West Virginia *does* restrict such power. As a necessary part of the decision which this Court is asked to review, the Supreme Court of Appeals of West Virginia interpreted and applied the above mentioned provision of the Constitution of that State in a manner producing such a restrictive effect.

As has heretofore been pointed out, this Court is the "final constitutional arbiter" of questions involving the validity of compacts between states (Brief p. 17). In the discharge of its responsibility to determine whether the Ohio River Valley Water Sanitation Compact is valid and binding with respect to the State of West Virginia, this Court is not necessarily bound by the interpretation which

the Court below placed upon the local constitutional provision here involved and as the result of which that Court found the Compact to be invalid and unauthorized insofar as its state was concerned. This Court may properly review the decision of the Supreme Court of Appeals of West Virginia on the latter point and if the conclusion is reached that the State Court's interpretation of the language of Article X, Section 4, of the State Constitution was unwarranted, then the West Virginia Court may be reversed: If this Court cannot review the decision of the Court below in this respect, the State of West Virginia would be enabled to pass upon the validity of its own acts with respect to the Compact and upon its own rights under the Compact contrary to the pronouncement of this Court in *Kentucky v. Indiana* (1930), 281 U. S. 163, 74 L. Ed. 784 (cited above, pp. 14, 17), to the effect that states cannot determine their rights "inter sese" and that this Court "must pass upon every question essential to such a determination although local legislation and *questions of state authorization* may be involved."

The power of any state to enter into compacts or agreements with other states is an inherent power of sovereignty.

*Poole v. Fleeger* (1837), 11 Peters, 185, 209, 9 L. Ed. 680, 690 (cited above, p. 18);

*Rhode Island v. Massachusetts* (1830), 12 Peters 657, 725, 9 L. Ed. 1233, 1261.

That power was considered by the drafters of the Constitution of the United States to be of such significance to the formation of "a more perfect Union" as to warrant the inclusion of a provision, which, as above pointed out, confirmed to the States the continuance of that power and at the same time placed in the Congress of the United States exclusive control over its exercise. It is a power which has

been characterized as a constitutional substitute for force as a means of adjusting interstate problems and disputes. Any curtailment by the States of their power to use such an instrumentality of statecraft should, if permitted at all, be scrutinized most carefully and limitations or restrictions thereon should not be created by implication but should be recognized only if imposed in clear and unequivocal language.

Notwithstanding the importance of the Compact as a vehicle for interstate adjustments and for interstate cooperation, by treating as a sure "debt" West Virginia's agreement under certain circumstances to bear a proportionate part of the expenses of administering the Ohio River Valley Water Sanitation Compact, the Supreme Court of Appeals of West Virginia has, by inference, read into the Constitution of that State a narrow and confining limitation upon the power of the State to deal with sister states or to participate in any cooperative interstate undertaking. An interpretation of Article X, Section 4, of the West Virginia Constitution as prohibiting entirely the assumption of any responsibility to contribute to the payment for or to share in the expenses of conducting any joint enterprise among states would substantially deprive West Virginia of the use of its power to compact with other states or to take any effective part in any cooperative interstate effort.

The restriction of Article X, Section 4, of the West Virginia Constitution, which merely says that "no debt shall be contracted" by that State, except under certain expressed circumstances, on its face, relates only to normal day to day fiscal matters and was not intended to circumscribe the compact powers of the State of West Virginia. This conclusion is borne out by the fact that the other Sections of Article X, all of which are in pari materia, involve only normal fiscal affairs of the state. The subject



matter of Article X, the full text of which is set forth as Appendix D of this Brief, is amply illustrated by the following listing of the subtitles which introduce its various Sections:

**"ARTICLE X**

1. Taxation and Finance
2. Capitation Tax
3. Receipts and Expenditures of Public Monies
4. Limitation on Contracting of State Debt
5. Power of Taxation
6. Credit of State Not to Be Granted in Certain Cases
7. Duties of County Authorities in Assessing Taxes
8. Bonded Indebtedness of Counties, Etc.
9. Municipal Taxes to Be Uniform"

The intended scope of Article X, Section 4, of the West Virginia Constitution has been expressed by the Supreme Court of Appeals of that State in the following language in *Bates v State Bridge Commission* (1930), 109 W. Va. 186, 153 S. E. 305:

"When our constitution of 1872 was formed, the experience of the mother state with debts contracted by her, and with suits to compel payment, were fresh in the minds of the framers of that Constitution. Numerous suits ending in heavy judgments and costs had been prosecuted against the Commonwealth; illiberal contracts and guaranties of enterprises had been made by government agencies detrimental to her interests; public officers and agencies had not been always zealous and careful in the conduct of public affairs; and juries leaned toward the individual as against the Commonwealth. With this experience the framers of the Constitution of 1872 provided that this State should not contract indebtedness, except in specified instances, and that the State should never be made defendant in any court of law or equity. The debts against which the prohibition lies are those for which suit may be maintained or the states revenues and resources pledged or sequestered."



Nothing in the language of Article X, Section 4, itself, justifies an extension of its application beyond the area defined by the above quoted language and into the realm of interstate relations. No ground for such an extension can be found in any of the other Sections of Article X which must be considered in connection with any construction of Section 4. Only by inference could the West Virginia Court use Article X, Section 4, as a basis for holding void the act of the West Virginia Legislature which ratified and enacted into law the Ohio River Valley Water Sanitation Compact. It is submitted that no such inference is warranted by the constitutional provisions under consideration and it is further submitted that West Virginia's power to participate in the cooperative effort represented by the Ohio River Valley Water Sanitation Compact should not be denied to it by inference.

3. **If Article X, Section 4, of the Constitution of the State of West Virginia Can and Does Restrict the Power of That State to Enter into Compacts with other States of the Union, Then Does Article X, or Any Other Provision of the Ohio River Valley Water Sanitation Compact, Subject the State of West Virginia to Any Obligation in Violation of the Above Mentioned Article and Section of Its Constitution?**

Should this Court, failing to accept the arguments of Petitioner with reference to the first two questions raised by this Petition, conclude that a state may by constitutional provision be restricted in its power to compact with other states and also conclude that Article X, Section 4, of the Constitution of West Virginia was properly interpreted as a limitation upon that State's power to compact, it would then become necessary for this Court to consider the third question raised by this petition. It is the contention of Petitioner that, if Article X, Section 4, of the West Virginia Constitution can and does limit the power of that State to enter into a compact, the provisions of

the Ohio River Valley Water Sanitation Compact should, if at all possible, be given a construction consistent with such limitation and favorable to its validity. It is the universal rule of statutory construction that the constitutionality of any legislative act will be sustained, if, by any reasonable interpretation it is possible to do so. Since it is never assumed that any legislative body intends to enact unconstitutional legislation, it will be held to have done so only in case of a plain infraction of the constitution from which there is no escape.

*Kinney v. County Court* (1931), 110 W. Va. 17, 156 S. E. 748;

*Bates v. State Bridge Commission* (1930), 109 W. Va. 186, 153 S. E. 305 (Brief p. 24).

The construction of the Ohio River Valley Water Sanitation Compact which was ratified and enacted into law by Chapter 38, Acts of the West Virginia Legislature, Regular Session, 1939, must be controlled by the same principles which govern the construction of any other legislative action. It must be presumed that the negotiators who initially drafted the Compact and the legislators who ultimately ratified it and enacted it into law in their respective states were intending to formulate an instrumentality of government which was fully within their powers to create and it must also be presumed that no one of them intended to exceed their own powers or expected any other negotiator or legislator to perform any unauthorized or invalid act. The Compact and each of its provisions must therefore be given that construction which is most favorable to its validity.

An examination of the language of the Compact itself will disclose that the only references made therein to finances or to financial obligations appear in Article V, second, third and fifth paragraphs and in Article X, which read as follows:

## “ARTICLE V

\* \* \* \* \*

“The Commission shall submit to the Governor of each State, at such time as he may request, a budget of its estimated expenditures for such period as may be required by the laws of such State for presentation to the legislature thereof.

“The Commission shall keep accurate books of account, showing in full its receipts and disbursements, and said books of account shall be open at any reasonable time to the inspection of such representatives of the respective signatory States as may be duly constituted for that purpose.

\* \* \* \* \*

“The Commission shall not incur any obligation of any kind prior to the making of appropriations adequate to meet the same; nor shall the Commission pledge the credit of any of the signatory States, except by and with the authority of the legislature thereof.”

## “ARTICLE X

“The signatory States agree to appropriate for the salaries, office and other administrative expenses, their proper proportion of the annual budget as determined by the Commission and approved by the Governors of the signatory States, one-half of such amount to be prorated among the several states in proportion to their population within the District at the last preceding Federal census, the other half to be prorated in proportion to their land area within the District.”

Nothing contained in the quoted portions of Article V may be construed as creating a debt or obligation on the part of any signatory state. On the contrary, those provisions reflect only a studied effort to keep the fiscal affairs of the Ohio River Valley Water Sanitation Compact sub-

ject to the supervision, discretion and control of the participating states:

Only in Article X is there to be found any language which may be interpreted as subjecting any signatory state to a financial obligation. Even that Section expressly provides for budgetary approval by the Governors of the signatory States, thus assuring to each state a full measure of control over the expenditures of the Commission. While Article X may include language capable of being construed as binding future legislatures to make appropriations, such an interpretation is neither mandatory nor inescapable. The language of Article X can, and, if necessary to sustain the constitutionality of the Compact, should be construed as merely being the expression of the understanding reached by the negotiators of the Compact with respect to the formula to be used in allocating among the signatory states the expenses of administering the Compact and of carrying on the operations of the Ohio River Valley Water Sanitation Commission.

It is submitted that if the language of Article X, Section 4, of the West Virginia Constitution can and does limit the general compact powers of that State, then the Compact under consideration can and must be construed in a manner consistent with its constitutionality, as was done by the minority members of the Supreme Court of Appeals of West Virginia.

**4. Whether Ratification and Enactment into Law of the Ohio River Valley Water Sanitation Compact by the Legislature of the State of West Virginia Resulted in an Unconstitutional Delegation of Police Power.**

Without reference to any express provision of the West Virginia Constitution, but relying entirely upon general legal principles, a majority of the members of the Court below held the Ohio River Valley Water Sanitation Com-

pact to be invalid, insofar as West Virginia was concerned, on the ground that the Compact results in an unauthorized delegation of the police power of that State. With that conclusion the minority of the Court again disagreed and in the separate dissenting opinion expressed the view that no delegation of police power was intended or was, in fact, accomplished by the provisions of the Compact.

Any finding of an improper delegation of police power would have to be based upon Articles VI and IX of the Compact. The second paragraph of Article VI provides a minimum standard for the treatment of sewage discharged into waters within the jurisdiction of the Ohio River Valley Water Sanitation Commission, and in addition provides that, in specific instances such higher degree of treatment shall be used as may be determined to be necessary by the Commission after investigation, notice and hearing.

The third paragraph of Article VI provides that all industrial wastes discharged into waters within the jurisdiction of the Commission shall be modified or treated, within a time reasonable for the construction of works, to such a degree as may be determined to be necessary by the Commission.

Paragraph five authorizes the Commission to adopt rules, regulations and standards for administering any of the provisions of the Article.

Article IX provides for the issuance of orders by the Commission to compel the abatement of any discharge of sewage or industrial wastes in violation of the Compact. No order may be effective against any corporation, person or entity within a state unless and until it receives the assent of not less than a majority of the Commissioners from such state. Article IX also authorizes the Commission to enforce compliance with its orders through actions insti-



tuted in state courts of general jurisdiction or in United States District Courts.

Thus it may be seen that what has been delegated to the Commission is the power:

- (a) to set standards in excess of the minimum set by the Compact for the treatment of sewage;
- (b) to set standards for the modification or treatment of industrial wastes;
- (c) to adopt rules and regulations for the administration of the Compact;
- (d) to issue and to enforce orders against violators of the Compact, but only if assent is obtained from a majority of the Commissioners from the state in which the violator is located.

The powers conferred upon the Commission by the Compact are merely administrative duties with respect to enforcement and establishment of standards which require expert professional study and attention. The conferring of such powers upon administrative agencies is an accepted legislative practice, particularly in the field of police regulations and matters relating to public health and welfare. No delegation of powers will be found in the Compact which violates the permissible limits of the delegation of legislative powers as discussed in *Panama Refining Company v. Ryan* (1934), 293 U. S. 388, 426 et seq., 79 L. Ed. 446, 462 et seq. and as reviewed in detail in the annotation which follows, at page 474, the Lawyers Edition Report of that case.

The propriety of clothing boards and commissions with judgment and discretion in carrying out legislative purposes has frequently been recognized by the Supreme Court of Appeals of West Virginia.

*Bates v. State Bridge Commission* (1930), 109 W. Va. 186, 153 S. E. 30 (Brief pp. 24 & 25);

*State v. Bunner* (1943), 126 W. Va. 280, 27 S. E. (2d) 823;

*West Central Producers Cooperative v. Commissioner* (1942), 124 W. Va. 81, 20 S. E. (2d) 797.

The Ohio River Valley Water Sanitation Commission is not an agency entirely independent of the states creating it and whose representatives are on it. The Commission as a whole is the agency of each participating state, even though its membership is drawn from all the states. No commission order whatsoever may go into effect without the consent of a majority of the commissioners of a majority of the signatory states, and no order upon a municipality, corporation or person in any state may go into effect without the consent of a majority of the commissioners of that particular state. Thus, regardless of the powers and duties which may have been conferred upon the Commission as a whole, the enforcement power with respect to any particular state has been retained in the hands of the appointees of that state. It is difficult to read from this situation any improper delegation of the police power of the state.

The conclusion of the majority of the Court below to the effect that the Legislature exceeded its authority in ratifying and enacting into law the Compact in question was in part based upon the thought that the Compact purported to bind the State in perpetuity. The Compact contains no express provisions as to the period for which it is to continue and it therefore must be assumed that it was the intention of each ratifying legislature, including the West Virginia Legislature, to obligate their respective States only to the extent and for the period of time that they had the power and authority to do so. If the Legislature of West Virginia had no authority to bind that State to the Ohio River Valley Water Sanitation Compact in perpetuity

then the ratifying action of that Legislature could not have done so and could not have been intended to do so. Certainly then the question as to the period during which the State of West Virginia may be obligated under the Compact should provide no sound basis for declaring its ratification to have been beyond the authority of the Legislature of that State.

Properly construed the Ohio River Valley Water Sanitation Compact makes no improper delegation of any police or legislative powers. At most the Compact confers upon a joint agency created by the participating states limited powers of enforcement and limited power to set standards, neither of which violates accepted principles. The agency upon which such powers are conferred i. e., the Ohio River Valley Water Sanitation Commission, is a common agency of all the States participating in the Compact. It is a governmental agency of the State of West Virginia on which that State jointly with the other States could properly confer the limited powers herein above discussed.

### CONCLUSION

For the foregoing reasons the Petition for a Writ of Certiorari in this cause should be granted.

Respectfully submitted,

JOHN B. HOLLISTER,  
*Attorney for Petitioner.*

## APPENDIX A

[PUBLIC RESOLUTION—No. 104—74TH CONGRESS]

[H. J. Res. 377]

## JOINT RESOLUTION

To enable the States of Maine, New Hampshire, New York, Vermont, Massachusetts, Rhode Island, Connecticut, Pennsylvania, West Virginia, Kentucky, Indiana, Illinois, Tennessee, and Ohio to conserve and regulate the flow of and purify the waters of rivers and streams whose drainage basins lie within two or more of the said States.

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent of the Congress of the United States is hereby given to the States of Maine, New York, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, Pennsylvania, West Virginia, Kentucky, Indiana, Illinois, Tennessee, and Ohio, or any two or more of them, to negotiate and enter into agreements or compacts for conserving and regulating the flow, lessening flood damage, removing sources of pollution of the waters thereof, or making other public improvements on any rivers or streams whose drainage basins lie within any two or more of the said States.*

Sec. 2. No such compact or agreement shall be binding or obligatory upon any State a party thereto unless and until it has been approved by the legislatures of each of the States whose assent is contemplated by the terms of the compact or agreement and by the Congress.

Approved, June 8, 1936.

## APPENDIX B

[PUBLIC—No. 739—76TH CONGRESS]

[CHAPTER 581—3D SESSION]

[S. 3617]

## AN ACT

Granting the consent and approval of Congress to an interstate compact relating to control and reduction of pollution in the Ohio River drainage basin.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the consent and approval of Congress is hereby given to an interstate compact relating to the control and reduction of the pollution of the streams of the Ohio River drainage basin negotiated and entered into or to be entered into under authority of Public Resolution Numbered 104, Seventy-fourth Congress, approved June 8, 1936, and now ratified by the States of New York, Illinois, Kentucky, and Indiana, and by the State of Ohio (whose ratification is to go into effect at the time at which the States of New York, Pennsylvania, and West Virginia enter into said compact as parties and signatory States), also by the State of West Virginia (whose ratification is to go into effect at the time at which the States of New York, Ohio, Virginia, and Pennsylvania enter into said compact as parties and signatory States), which compact reads as follows:

"SECTION 1.—

"OHIO RIVER VALLEY WATER SANITATION  
COMPACT

"BETWEEN THE STATES OF ILLINOIS, INDIANA, KENTUCKY, NEW YORK, OHIO, PENNSYLVANIA, TENNESSEE, AND WEST VIRGINIA

"Pursuant to authority granted by an Act of the 74th Congress of the United States, Public Resolution 104, approved June 8, 1936, conferences of delegates appointed to draft the compact were held at Cincinnati, Ohio, on Nov. 20, 1936; Jan. 17, 1938; May 24, 1938; June 13, 1938; October 11, 1938.



"Whereas, a substantial part of the territory of each of the signatory states is situated within the drainage basin of the Ohio River; and

"Whereas, the rapid increase in the population of the various metropolitan areas situated within the Ohio drainage basin, and the growth in industrial activity within that area, have resulted in recent years in an increasingly serious pollution of the waters and streams within the said drainage basin, constituting a grave menace to the health, welfare, and recreational facilities of the people living in such basin, and occasioning great economic loss; and

"Whereas, the control of future pollution and the abatement of existing pollution in the waters of said basin are of prime importance to the people thereof, and can best be accomplished through the cooperation of the States situated therein, by and through a joint or common agency;

"Now, Therefore, The States of Illinois, Indiana, Kentucky, New York, Ohio, Pennsylvania, Tennessee, and West Virginia do hereby covenant and agree as follows:

## "ARTICLE I

"Each of the signatory States pledges to each of the other signatory States faithful cooperation in the control of future pollution in and abatement of existing pollution from the rivers, streams, and waters in the Ohio River basin which flow through, into or border upon any of such signatory States, and in order to effect such object, agrees to enact any necessary legislation to enable each such State to place and maintain the waters of said basin in a satisfactory sanitary condition, available for safe and satisfactory use as public and industrial water supplies after reasonable treatment, suitable for recreational usage, capable of maintaining fish and other aquatic life, free from unsightly or malodorous nuisances due to floating solids or sludge deposits, and adaptable to such other uses as may be legitimate.

## "ARTICLE II

"The signatory States hereby create a district to be known as the Ohio River Valley Water Sanitation Dis-

trict,' hereinafter called the District, which shall embrace all territory within the signatory States, the water in which flows ultimately into the Ohio River, or its tributaries.

### “ARTICLE III

“The signatory States hereby create the ‘Ohio River Valley Water Sanitation Commission,’ hereinafter called the Commission, which shall be a body corporate, with the powers and duties set forth herein, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the signatory States or by act or acts of the Congress of the United States.

### “ARTICLE IV

“The Commission shall consist of three commissioners from each State, each of whom shall be a citizen of the State from which he is appointed, and three commissioners representing the United States Government. The commissioners from each State shall be chosen in the manner and for the terms provided by the laws of the States from which they shall be appointed, and any commissioner may be removed or suspended from office as provided by the law of the State from which he shall be appointed. The commissioners representing the United States shall be appointed by the President of the United States, or in such other manner as may be provided by Congress. The commissioners shall serve without compensation, but shall be paid their actual expenses incurred in and incident to the performance of their duties; but nothing herein shall prevent the appointment of an officer or employee of any State or of the United States Government.

### “ARTICLE V

“The Commission shall elect from its number a chairman and vice-chairman, and shall appoint, and at its pleasure remove or discharge, such officers and legal, clerical, expert and other assistants as may be required to carry the provisions of this compact into effect, and shall fix and determine their duties, qualifications and compensation. It shall

adopt a seal and suitable by-laws, and shall adopt and promulgate rules and regulations for its management and control. It may establish and maintain one or more offices within the District for the transaction of its business, and may meet at any time or place. One or more commissioners from a majority of the member States shall constitute a quorum for the transaction of business.

"The Commission shall submit to the Governor of each State, at such time as he may request, a budget of its estimated expenditures for such period as may be required by the laws of such State for presentation to the legislature thereof.

"The Commission shall keep accurate books of account, showing in full its receipts and disbursements, and said books of account shall be open at any reasonable time to the inspection of such representatives of the respective signatory States as may be duly constituted for that purpose.

"On or before the first day of December of each year, the Commission shall submit to the respective governors of the signatory States a full and complete report of its activities for the preceding year.

"The Commission shall not incur any obligations of any kind prior to the making of appropriations adequate to meet the same; nor shall the Commission pledge the credit of any of the signatory States, except by and with the authority of the legislature thereof.

## "ARTICLE VI

"It is recognized by the signatory States that no single standard for the treatment of sewage or industrial wastes is applicable in all parts of the District due to such variable factors as size, flow, location, character, self-purification, and usage of waters within the District. The guiding principle of this compact shall be that pollution by sewage or industrial wastes originating within a signatory State shall not injuriously affect the various uses of the interstate waters as hereinbefore defined.

"All sewage from municipalities or other political subdivisions, public or private institutions, or corporations,

discharged or permitted to flow into these portions of the Ohio River and its tributary waters which form boundaries between, or are contiguous to, two or more signatory States, or which flow from one signatory State into another signatory State, shall be so treated, within a time reasonable for the construction of the necessary works, as to provide for substantially complete removal of settleable solids, and the removal of not less than forty-five per cent (45%) of the total suspended solids; provided that, in order to protect the public health or to preserve the waters for other legitimate purposes, including those specified in Article I, in specific instances such higher degree of treatment shall be used as may be determined to be necessary by the Commission after investigation, due notice and hearing.

"All industrial wastes discharged or permitted to flow into the aforesaid waters shall be modified or treated, within a time reasonable for the construction of the necessary works, in order to protect the public health or to preserve the waters for other legitimate purposes, including those specified in Article I, to such degree as may be determined to be necessary by the Commission after investigation, due notice and hearing.

"All sewage or industrial wastes discharged or permitted to flow into tributaries of the aforesaid waters situated wholly within one State shall be treated to that extent, if any, which may be necessary to maintain such waters in a sanitary and satisfactory condition at least equal to the condition of the waters of the interstate stream immediately above the confluence.

"The Commission is hereby authorized to adopt, prescribe and promulgate rules, regulations and standards for administering and enforcing the provisions of this article.

## "ARTICLE VII

"Nothing in this compact shall be construed to limit the powers of any signatory State, or to repeal or prevent the enactment of any legislation or the enforcement of any requirement by any signatory State, imposing additional conditions and restrictions to further lessen or prevent the pollution of waters within its jurisdiction.

## “ARTICLE VIII

“The Commission shall conduct a survey of the territory included within the District, shall study the pollution problems of the District, and shall make a comprehensive report for the prevention or reduction of stream pollution therein. In preparing such report, the Commission shall confer with any national or regional planning body which may be established, and any department of the Federal Government authorized to deal with matters relating to the pollution problems of the District. The Commission shall draft and recommend to the governors of the various signatory States uniform legislation dealing with the pollution of rivers, streams and waters and other pollution problems within the District. The Commission shall consult with and advise the various States, communities, municipalities, corporations, persons, or other entities with regard to particular problems connected with the pollution of waters, particularly with regard to the construction of plants for the disposal of sewage, industrial and other waste. The Commission shall, more than one month prior to any regular meeting of the legislature of any State which is a party thereto, present to the governor of the State its recommendations relating to enactments to be made by any legislature in furthering the intents and purposes of this compact.

## “ARTICLE IX

“The Commission may from time to time, after investigation and after a hearing, issue an order or orders upon any municipality, corporation, person, or other entity discharging sewage or industrial waste into the Ohio River or any other river, stream or water, any part of which constitutes any part of the boundary line between any two or more of the signatory States, or into any stream any part of which flows from any portion of one signatory State through any portion of another signatory State. Any such order or orders may prescribe the date on or before which such discharge shall be wholly or partially discontinued, modified or treated or otherwise disposed of. The Commission shall give reasonable notice of the time and place



of the hearing to the municipality, corporation or other entity against which such order is proposed. No such order shall go into effect unless and until it receives the assent of at least a majority of the commissioners from each of not less than a majority of the signatory States; and no such order upon a municipality, corporation, person or entity in any State shall go into effect unless and until it receives the assent of not less than a majority of the commissioners from such state.

"It shall be the duty of the municipality, corporation, person or other entity to comply with any such order issued against it or him by the Commission, and any court of general jurisdiction or any United States district court in any of the signatory States shall have the jurisdiction, by mandamus, injunction, specific performance or other form of remedy, to enforce any such order against any municipality, corporation or other entity domiciled or located within such State or whose discharge of the waste takes place within or adjoining such State, or against any employe, department or subdivision of such municipality, corporation, person or other entity; provided, however, such court may review the order and affirm, reverse or modify the same upon any of the grounds customarily applicable in proceedings for court review of administrative decisions. The Commission or, at its request, the Attorney General or other law enforcing official, shall have power to institute in such court any action for the enforcement of such order.

## "ARTICLE X

"The signatory States agree to appropriate for the salaries, office and other administrative expenses, their proper proportion of the annual budget as determined by the Commission and approved by the Governors of the signatory States, one-half of such amount to be prorated among the several States in proportion of their population within the District at the last preceding federal census, the other half to be prorated in proportion to their land area within the District.

## “ARTICLE XI

“This compact shall become effective upon ratification by the legislatures of a majority of the States located within the District and upon approval by the Congress of the United States; and shall become effective as to any additional States signing thereafter at the time of such signing.”

SEC. 2. Without further submission of said compact, the consent of Congress is hereby given to the State of Virginia or any other State with waters in the Ohio River drainage basin, entering into said compact as a signatory State and party in addition to the States therein named or any of them.

SEC. 3. The commissioners to represent the United States, as provided in article IV of said compact, shall be appointed by the President.

SEC. 4. Nothing contained in this Act or in the compact herein approved shall be construed as impairing or affecting the sovereignty of the United States or any of its rights or jurisdiction in and over the area or waters which are the subject of such compact.

SEC. 5. The right to alter, amend, or repeal the provisions of section 1 is hereby expressly reserved.

Approved, July 11, 1940.

**APPENDIX C****CHAPTER 38**

(House Bill No. 369—By Mr. Brotherton)

AN ACT approving, ratifying and enacting into law the "Ohio River Valley Water Sanitation Compact" for the prevention, abatement and control of pollution of the rivers, streams and waters in the Ohio river drainage basin and making the state of West Virginia a party thereto; creating the "Ohio River Valley Water Sanitation Commission"; providing for the members of such commission from the state of West Virginia; and providing for the carrying out of said compact.

(Passed March 11, 1939; in effect ninety days from passage. Approved by the Governor.)

**SECTION**

1. Ohio river valley water sanitation compact approved.
2. Appointment of members of Ohio river valley water sanitation commission; state commissioner of health to be a member ex officio.
3. Powers of commission; duties of state officers, departments, etc.; jurisdiction of circuit courts; enforcement of act.
4. Powers granted herein supplemental to other powers vested in commission.
5. Expenses of commission; appropriations; officers and employees; meetings.
6. When act to become effective.

Be it enacted by the Legislature of West Virginia:

Section 1. Ohio River Valley Water Sanitation Compact Approved. The following Ohio River Valley Water Sanitation Compact, which has been negotiated by representatives of the states of Illinois, Indiana, Kentucky, New York, Ohio, Pennsylvania, Tennessee and West Virginia, is hereby approved, ratified, adopted, enacted into law, and entered into by the state of West Virginia as a party thereto and signatory state, namely:

(At this point in the Act appears the verbatim text of the Ohio River Valley Water Sanitation Compact which has already been set forth as a part of Appendix B.)

Section 2. Appointment of Members of Ohio River Valley Water Sanitation Commission; State Commissioner of Health to be Ex Officio Member. In pursuance of article four of said compact, there shall be three members of the "Ohio River Valley Water Sanitation Commission" from the state of West Virginia. The governor, by and with the advice and consent of the Senate, shall appoint two persons as two of such commissioners, each of whom shall be a resident and citizen of this state. The terms of one of the said two commissioners first appointed shall be three years and of the other shall be six years; and their successors shall be appointed by the governor, by and with the advice and consent of the Senate for terms of six years each. Each commissioner shall hold office until his successor shall be appointed and qualified. Vacancies occurring in the office of any such commissioner from any reason or cause shall be filled by appointment by the governor, by and with the advice and consent of the Senate, for the unexpired term. The third commissioner from this state shall be the commissioner of health ex officio, and the term of any such ex officio commissioner shall terminate at the time he ceases to hold said office of commissioner of health, and his successor as a commissioner shall be his successor as said commissioner of health. With the exception of the issuance of any order under the provisions of article nine of the compact, said ex officio commissioner may delegate, from time to time, to any deputy or other subordinate in his department or office, the power to be present and participate, including voting, as his representative or substitute at any meeting of or hearing by or other proceeding of the commission. The terms of each of the initial three members shall begin at the date of the appointment of the two appointive commissioners, provided the said compact shall then have gone into effect in accordance with article eleven of the compact; otherwise shall begin upon the date which said compact shall become effective in accordance with said article eleven.

- Any commissioner may be removed from office by the governor.

Section 3. Powers of Commission; Duties of State Officers, Departments, etc.; Jurisdiction of Circuit Courts; Enforcement of Act. There is hereby granted to the commission and commissioners thereof all the powers provided for in the said compact and all the powers necessary or incidental to the carrying out of said compact in every particular. All officers of this state are hereby authorized and directed to do all things falling within their respective provinces and jurisdiction necessary to or incidental to the carrying out of said compact in every particular; it being hereby declared to be the policy of this state to perform and carry out the said compact and to accomplish the purposes thereof. All officers, bureaus, departments and persons of and in the state government or administration of this state of West Virginia are hereby authorized and directed at convenient times and upon request of the said commission to furnish the said commission with information and data possessed by them or any of them and to aid said commission by loan of personnel or other means lying within their legal powers respectively.

The circuit courts of this state are hereby granted the jurisdiction specified in article nine of said compact, and the attorney general or any other law-enforcing officer of this state is hereby granted the power to institute any action for the enforcement of the orders of the commission as specified in said article nine of the compact.

Section 4. Powers Granted Herein Supplemental to Other Powers Vested in Commission. Any powers herein granted to the commission shall be regarded as in aid of and supplemental to and in no case a limitation upon any of the powers vested in said commission by other laws of this state or by the laws of the states of Illinois, Indiana, Kentucky, New York, Ohio, Pennsylvania, Tennessee, or by congress or the terms of said compact.

Section 5. Expenses of Commission; Appropriations; Officers and Employees; Meetings. The commissioners shall be reimbursed out of moneys appropriated for such purposes, all sums which they necessarily shall expend in the discharge of their duties as members of such commission.



There shall be appropriated to the commission out of any moneys in the state treasury unexpended and available therefor, and not otherwise appropriated, such sums as may be necessary for the uses and purposes of the commission in carrying out the provisions of this act and the payment of the proper proportion of the state of West Virginia of the annual budget of the "Ohio River Valley Water Sanitation Commission" in accordance with article ten of said compact.

The commission shall elect from its membership a chairman and may also select a secretary who need not be a member. The commission may employ such assistance as it may deem necessarily required, and the duties of such assistants shall be prescribed and their compensation fixed by the commission and paid out of the state treasury out of funds appropriated for such purposes upon the requisition of said commission.

The commission shall meet at such times and places as agreed upon by the commissioners or upon call of its chairman.

Section 6. When Act to Become Effective. This act shall take effect and become operative and the compact be executed for and on behalf of this state only from and after the approval, ratification, and adoption, and entering into thereof by the states of New York, Pennsylvania, Ohio, and Virginia.

## APPENDIX D

THE CONSTITUTION OF WEST VIRGINIA  
ARTICLE X*Taxation and Finance*

1. Subject to the exceptions in this section contained, taxation shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxed in proportion to its value to be ascertained as directed by law. No one species of property from which a tax may be collected shall be taxed higher than any other species of property of equal value; except that the aggregate of taxes assessed in any one year upon personal property employed exclusively in agriculture, including horticulture and grazing, products of agriculture as above defined, including live stock, while owned by the producer, and money, notes, bonds, bills and accounts receivable, stocks and other similar intangible personal property shall not exceed fifty cents on each one hundred dollars of value thereon and upon all property owned, used and occupied by the owner thereof exclusively for residential purposes and upon farms occupied and cultivated by their owners or bona fide tenants, one dollar; and upon all other property situated outside of municipalities, one dollar and fifty cents; and upon all other such property situated within municipalities, two dollars; and the Legislature shall further provide by general law for increasing the maximum rates authorized to be fixed by the different levying bodies upon all classes of property by submitting the question to the voters of the taxing units affected, but no increase shall be effective unless at least sixty percent of the qualified voters shall favor such increase, and such increase shall not continue for a longer period than three years at any one time, and shall never exceed by more than fifty percent the maximum rate herein provided and prescribed by law; and the revenue derived from this source shall be apportioned by the Legislature among the levying units of the State in proportion to the levy laid in said units upon real and other personal property; but property used for educational, literary,

scientific, religious or charitable purposes, all cemeteries, public property, the personal property, including live stock, employed exclusively in agriculture as above defined and the products of agriculture as so defined while owned by the producers may by law be exempted from taxation; household goods to the value of two hundred dollars shall be exempted from taxation. The Legislature shall have authority to tax privileges, franchises and incomes of persons and corporations and to classify and graduate the tax on all incomes according to the amount thereof and to exempt from taxation incomes below a minimum to be fixed from time to time, and such revenues as may be derived from such tax may be appropriated as the Legislature may provide. After the year nineteen hundred thirty-three, the rate of the state tax upon property shall not exceed one cent upon the hundred dollars valuation, except to pay the principal and interest of bonded indebtedness of the State now existing.

(This section, prior to its amendment, read as follows: "Taxation shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxed in proportion to its value, to be ascertained as directed by law. No one species of property, from which a tax may be collected, shall be taxed higher than any other species of property of equal value; but property used for educational, literary, scientific, religious or charitable purposes, all cemeteries and public property may, by law, be exempted from taxation. The Legislature shall have power to tax, by uniform and equal laws, all privileges and franchises of persons and corporations.")

The amendment as above set forth was proposed by House Joint Resolution No. 3, adopted August 6, 1932 (Acts Ex. Sess. 1932, p. 16) and was ratified at the general election in 1932. Vote on the amendment: For ratification, 335,482; against ratification, 43,931; majority 291,551.)

### *Capitation Tax*

2. The Legislature shall levy an annual capitation tax of one dollar upon each male inhabitant of the State who

has attained the age of twenty-one years, which shall be annually appropriated to the support of free schools. Persons afflicted with bodily infirmity may be exempted from this tax.

### *Receipts and Expenditures of Public Monies*

3. No money shall be drawn from the treasury but in pursuance of an appropriation made by law, and on a warrant issued thereon by the Auditor; nor shall any money or fund be taken for any other purpose than that for which it has been or may be appropriated or provided. A complete and detailed statement of the receipts and expenditures of the public monies shall be published annually.

### *Limitation on Contracting of State Debt*

4. No debt shall be contracted by this State, except to meet casual deficits in the revenue, to redeem a previous liability of the State; to suppress insurrection, repel invasion or defend the State in time of war; but the payment of any liability other than that for the ordinary expenses of the State, shall be equally distributed over a period of at least twenty years.

### *Power of Taxation*

5. The power of taxation of the Legislature shall extend to provisions for the payment of the State debt, and interest thereon, the support of free schools, and the payment of the annual estimated expenses of the State, but whenever any deficiency in the revenue shall exist in any year, it shall, at the regular session thereof held next after the deficiency occurs, levy a tax for the ensuing year, sufficient with the other sources of income, to meet such deficiency, as well as the estimated expenses of such year.

### *Credit of State Not to Be Granted in Certain Cases*

6. The credit of the State shall not be granted to, or in aid of any country, city, township, corporation or person; nor shall the State ever assume, or become responsible for the debts or liabilities of any county, city, township, corporation or person; nor shall the State ever hereafter become a joint owner, or stockholder in any company or association in this State or elsewhere, formed for any purpose whatever.

*Duties of County Authorities in Assessing Taxes*

7. County authorities shall never assess taxes, in any one year, the aggregate of which shall exceed ninety-five cents per one hundred dollars valuation except for the support of free schools; payment of indebtedness existing at the time of the adoption of this Constitution; and for the payment of any indebtedness with the interest thereon, created under the succeeding section, unless such assessment, with all questions involving the increase of such aggregate, shall have been submitted to the vote of the people of the county, and have received three-fifths of all the votes cast for and against it.

*Bonded Indebtedness of Counties, Etc.*

8. No county, city, school district, or municipal corporation, except in cases where such corporations have already authorized their bonds to be issued, shall hereafter be allowed to become indebted, in any manner, or for any purpose, to an amount, including existing indebtedness, in the aggregate, exceeding five per centum on the value of the taxable property therein to be ascertained by the last assessment for State and county taxes, previous to the incurring of such indebtedness; nor without, at the same time, providing for the collection of a direct annual tax, sufficient to pay, annually, the interest on such debt, and the principal thereof, within, and not exceeding thirty-four years: Provided, That no debt shall be contracted under this section, unless all questions connected with the same, shall have been first submitted to a vote of the people, and have received three-fifths of all the votes cast for and against the same.

*Municipal Taxes to Be Uniform*

9. The Legislature may, by law, authorize the corporate authorities of cities, towns and villages, for corporate purposes, to assess and collect taxes; but such taxes shall be uniform, with respect to persons and property within the jurisdiction of the authority imposing the same.